S.B.Civil Revision Petition No.19/2006

Smt. Kanku Bai and others.
vs.
Nand Lal.

Date : 24.7.2006

HON'BLE MR. PRAKASH TATIA, J.

Mr. Vineet Jain, for the petitioners.
Mr. Manish Pitaliya, for the respondent.

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At the request of learned counsel for the parties, this revision petition is heard finally and decided.

This revision petition is against the order dated 22.11.2005 by which the trial court allowed the application filed by the plaintiff/respondent purported to be under Section 5 of the Limitation Act but in fact is under Section 14 of the Limitation Act.

Brief facts of the case are that according to the plaintiff, a loan of Rs.1,05,000/- was advanced by his father Laxmi Lal to the ancestor of the petitioners/defendants – Mithu Lal on 1.11.1983. Said Mithu Lal admitted the loan and signed its receipt in the register kept by Laxmi Lal. On 2.11.1983, said Mithu Lal further took loan of Rs.20,000/- from plaintiff's father for which a receipt was given in the register of the plaintiff's father. On 1.6.1984, said Mithu Lal deposited

Rs.10,000/- with the plaintiff's father through one Bheru Lal Teli who also signed in the register of the plaintiff's father. The plaintiff's father submitted a petition under Section 6 of the Rajasthan Relief of Agriculture Indebtedness Act, 1957 (for short 'the Act of 1957') for determination of debt of said Mithu Lal. Under Section 21 of the Act of 1957, the suit against the agriculturist for recovery of loan amount in civil court is barred. The defendants contested the said petition by raising objection that the defendants before the Debt Relief Court are not agriculturists. The matter came up before the revisional court – District Judge, Pratapgarh upon which the learned District Judge directed the Debt Relief Court vide order dated 28.1.1999 to decide the question first whether the defendants/present petitioners are agriculturists or not. The parties led their evidence and ultimately, the Debt Relief Court held that the defendants are not agriculturists vide order dated 2.11.1999. The plaintiff not satisfied with the said order dated 2.11.1999 preferred revision petition before the District Court, Pratapgarh which was dismissed by the order dated 4.4.2002. The plaintiff thereafter submitted present suit before the trial court on 24.4.2002 along with application under Section 5 of the Limitation Act (in fact should have been under Section 14 of the Limitation Act). The trial court after hearing the parties condoned the delay on the ground that the plaintiff/respondent prosecuted the litigation for about 16 years in Debt Relief Court and that Court had no jurisdiction. Therefore, plaintiff is entitled to benefit

under Section 14 of the Limitation Act. The petitioners/defendants are aggrieved against the order of the trial court dated 22.11.2005. Hence, this revision petition.

Learned counsel for the petitioners vehemently submitted that the action of the plaintiff of moving petition under Section 6 of the Act of 1957 cannot be said to be bonafide because of the reason that the petitioners were not agriculturists. They made it clear by submitting reply in the Debt Relief Court still the plaintiff did not withdraw his petition to file suit in proper court and he insisted decision on merits about status of the petitioners. Not only this that he insisted during the pendency of the petition under Section 6 of the Act of 1957 but even when the Debt Relief Court held that the petitioners are not agriculturists, the plaintiff preferred revision petition which was dismissed by the revisional court, therefore, the court below without examining the bonafides of the plaintiff/respondent in conducting the case in Debt Relief Court, condonation the delay, merely on the ground that in the Debt Relief Court consumed 16 years, therefore, the plaintiff is entitled to condonation of delay of 16 years.

Learned counsel for the petitioners heavily relied upon the judgment of the Hon'ble Apex Court delivered in the case of Deena (Dead) through L.Rs. vs. Bharat Singh (dead) through L.Rs. and others reported in AIR 2002 SC 2768 wherein the scope of Section 14 of the Limitation has been

considered by the Hon'ble Apex Court in detail.

Learned counsel for the plaintiff/respondent submitted that the respondent bonafidely submitted petition before the Debt Relief Court under the Act of 1957 for determination of debt of the debtor. It is submitted that the respondent bonafidely believed that the petitioners are agriculturists, therefore, plaintiff would have instituted civil suit than that would have been barred by the provisions of the Act of 1957. It is true that the petitioners submitted that they are not agriculturists but that was their plea. The plaintiff/non-petitioner bonafidely tried to prove the fact that the defendants/ petitioners are agriculturists. Failing of the plaintiff/non-petitioners in proving the defendants/ petitioners being agriculturists does not mean that plaintiff with ulterior motive or because of lack of bonafides on his part, prosecuted the case in a Court for long 16 years. It is also submitted that the plaintiff got the decision against him which only declared that the Debt Relief Court had no jurisdiction. The plaintiff immediately filed the suit on 24.4.2002 in the civil court. It is also submitted that the order of the Court below under Section 14 of the Limitation Act is discretionary order and, therefore, this Court may not interfere in a case where huge amount was advanced long ago and the suit has been declared to be within limitation by the Court below after condonation of delay under Section 14 of the Limitation Act.

I have considered the submissions of learned counsel for the parties and perused the facts of the case.

The Hon'ble Supreme Court in the case of Deena (supra) in detail reiterated the legal position which is almost settled and which provides that under what circumstances, delay in filing the suit can be condoned under Section 14 of the Limitation Act. It will be worthwhile to mention here that in that case, there was a question of non-joinder of the parties and that was fatal for the suit. The Hon'ble Supreme Court observed that in that facts and circumstances, it cannot be said that the Court dismissed the suit on the ground of lack of jurisdiction. Here in this case, the question of jurisdiction of Debt Relief Court was dependent upon the fact whether the debtors were agriculturists or not. The plaintiff, if was under belief that the defendants since are agriculturists, the plaintiff can only submit the petition under Section 6 of the Act of 1957 and his suit for recovery of money would be barred, then it nowhere appears from the facts of the case that the plaintiff's action was tinted with oblique motive. It can be presumed that he has not approached the Court of law simply for keeping the matter in the Court with ulterior motive. Pendency of litigation in Debt Relief Court for long 16 years for deciding the issue whether the petitioners were agriculturists or not itself speaks loudly and if the Court would not have not taken so much of long time and would have decided the said issue forthwith, the plaintiff might have even filed the suit within the period

of limitation because the loan initially was advanced on 1.11.1983, the plea of part payment under Section 19 of the Limitation Act is also there which explains the limitation for filing the suit upto 6.1.1987, in case, the plaintiff is given opportunity to prove that fact. The plaintiff filed the suit on 23.10.1986 before few months of the expiry of period of limitation from the date of acknowledgement (if proved).

Once the Debt Relief Court held that the petition filed by the plaintiff under Section 6 of the Act of 1957 is not maintainable, then certainly that is a declaration of the Court that the Court had no jurisdiction, therefore, it is clear that the plaintiff prosecuted the claim in wrong court and the said court had no jurisdiction to grant the relief to the plaintiff. So far as the bonafide of the plaintiff in submitting the petition before the Court which had no jurisdiction is concerned, I do not find that it required to be doubted at this stage when he contested the suit for 16 years in a Court of law. Otherwise also, a liberal approach in a matter of condonation of delay can be helpful in deciding the matter on merits.

In view of the above discussion, I do not find any merit in this revision petition and the same is hereby dismissed.

The facts mentioned above itself are sufficient for deciding the suit expeditiously and, therefore, the court below is directed to decide the suit expeditiously within

six months from the date of receipt of the copy of this order and both the parties are directed to cooperate the court below in deciding the suit.

(PRAKASH TATIA), J.

S.Phophaliya